

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STEVEN A. WHITE,)
)
 Plaintiff,)
)
 v.) C.A. No. N11M-12-080 WCC
)
 BOARD OF PAROLE,)
)
 Defendant.)

Submitted: March 16, 2012
Decided: June 28, 2012

ORDER

Upon Defendant's Motion to Dismiss Writ of Mandamus. GRANTED.

Steven A. White, James T. Vaughn Correctional Center, Smyrna, DE 19977. *Pro Se* Plaintiff.

Elio Battista, Jr., Esquire. Department of Justice, 820 N. French Street, 6th Floor, Wilmington, DE 19801. Attorney for Board of Parole.

CARPENTER, J.

On this 28th day of June, 2012, upon consideration of Defendant Board of Parole's Motion to Dismiss Petitioner Steven A. White's Writ of Mandamus, it appears to the Court that:

1. Inmate Steven A. White has been in the custody of the Delaware Department of Correction since 1979 as a result of being convicted of Murder Second Degree. He has applied for parole numerous times but these applications have generally been denied.¹ White most recently applied for parole on May 26, 2009, and after a hearing on the matter, the Board of Parole denied White's application and told him that he could reapply in May 2012. When White submitted a parole application on November 7, 2011, it was returned by the Board for failing to comply with the Board's instructions. White then filed a Writ of Mandamus to compel the Board to accept White's application and the Board filed this Motion to Dismiss in response.
2. A writ of mandamus is an extraordinary remedy issued to compel an administrative agency to perform a duty.² The Court will only issue the writ if its petitioner has demonstrated that (1) there is a clear right to the performance of a duty; (2) there is no adequate remedy available; and (3) an

¹ White received parole in 2003 but it was revoked a year later.

² *Wilson v. Danberg*, 2010 WL 3946298, at *1 (Del. Oct. 11, 2010).

administrative agency arbitrarily failed or refused to perform its duty.³

White alleges that 11 *Del. C.* § 4347(a) requires the Board to accept his application for parole within 180 days of May 2012 and their failure to do so warrants the issuance of the writ.

3. Title 11 *Del. C.* § 4346 establishes for inmates serving a parole eligible sentence the date when an inmate becomes eligible for parole (parole eligibility date) and § 4347(a) establishes the date on which that inmate may apply for parole (application eligibility date).⁴ White became eligible for parole after he had served one third of his prison sentence reduced by merit and good time credits. This established when he could first seek parole status.⁵ Once this date was established, § 4347(a) determined when White could submit his application. White is correct that the Board is required to accept an inmate's initial application 180 days before his parole eligibility date. That was done here and there is no violation alleged for White's initial application. There is also no dispute that if parole is denied, the

³ *Id.*

⁴ See 11 *Del. C.* § 4347(a) ("A person committed to the custody of the Department who will be eligible for parole within 180 days may apply for a parole hearing . . . [and] the Board shall determine within 30 days if a parole hearing will be scheduled. If the hearing is denied or if the hearing is held and the parole denied the applicant and the Department shall be advised in writing by the Board of the earliest date . . . upon which the applicant shall be eligible to again apply for a parole hearing in accordance within this section.").

⁵ See 11 *Del. C.* § 4346 ("A person confined to any correctional facility administered by the Department may be released on parole by the Board if the person has served $\frac{1}{3}$ of the term imposed by the court, such term to be reduced by such merit and good behavior credits as have been earned, or 120 days, whichever is greater.").

Board controls when the inmate may apply again. White's petition asserts that once the Board establishes the date he may reapply for parole, §4347(a) again requires it accept the inmate's application 180 days prior to that new date. The Court disagrees and finds § 4347(a)'s 180-day application window becomes irrelevant after the initial parole proceeding because, from that date forward, the Board establishes when an inmate may again apply for parole.

4. White's parole eligibility date was in March 1993. Accordingly, White's first application was allowed to be filed in September 1992, 180 days before his parole eligibility date. However, since March 1993, he has only been eligible to apply for parole at the behest of the Board. In May 2009 the Board instructed White that he would be eligible to apply for parole in May 2012. This became the date when White could again submit an application for parole. Thus in White's case the Board had no duty to accept any application for parole submitted before May 2012, and the Court will not command it to.
5. For the foregoing reasons, the Court will not issue a Writ of Mandamus against the Board of Parole, and the Board's Motion to Dismiss is hereby GRANTED. While the Court has denied White's request, it would suggest

the Board consider clarifying § 4347 through the legislative process to avoid this confusion in the future.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr. _____
Judge William C. Carpenter, Jr.